

# **EXHIBIT 12**



September 12, 2023

Mr. James A. Newton  
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New York, NY 10019-9601

By Electronic Mail:  
JNewton@mofo.com

Dear Mr. Newton:

I am writing to respond to your correspondence dated March 31, 2023 (“March 31 Letter”), which was a follow-up to the U.S. Department of Education’s (“Department’s”) latest response of December 8, 2022 (“December 8 Letter”) in the ongoing correspondence related to your initial June 2, 2022 letter. This correspondence relates to the Department’s use of the proceeds of certain letters of credit (“LOCs”) posted by Education Management Corporation (“EDMC”) on behalf of institutions owned by EDMC, due to the failure of financial responsibility of EDMC. Thank you for the additional information you provided on April 17, 2023. On May 5, May 25, June 14, and July 3, 2023 the Department provided you with updates on its efforts to verify the liabilities related to closed school loan discharges. Your March 31 Letter indicates that you represent Education Creditor Trust (“ECT”) in its capacity as lender to EDMC and its affiliates under a 2015 credit facility.

EDMC sold many of its institutions to Dream Center Education Holdings (“DCEH”) with closings that occurred in October 2017 and January 2018. As reflected in a series of letters in September and October 2017, the Department required DCEH to post an LOC as a condition of its continued participation following the change in ownership. Ultimately, the Department, EDMC and DCEH agreed that the EDMC LOCs would be retained to provide the required financial security.<sup>1</sup>

By its letter dated October 17, 2017, EDMC agreed that the the remaining \$107,509,133 in LOCs could “be used to cover the liabilities for all institutions covered under the letters of credit, regardless of ownership.” See October 17, 2017 letter from Mark McEachen, President & CEO of EDMC to Michael Frola (“McEachen Letter”) (attached as Exhibit B to the September 16<sup>th</sup> Letter). These LOCs were a material condition of the institutions' continued participation in Title IV programs following the change in ownership.

<sup>1</sup> At the time the transaction occurred, the Department held EDMC LOCs in the amount of \$194 million. Pursuant to discussions with EDMC and DCEH in October 2017 (in connection with the change of ownership) the Department released approximately \$87 million in LOCs, so that it only retained \$107 million.

When an institution has failed the Department's financial responsibility standards, the Department requires the institution to post financial protection to avoid the risk of financial losses to taxpayers and students resulting from unpaid liabilities as a result of failed financial stewardship by owners. EDMC agreed, as set forth in the McEachen Letter, that the EDMC LOCs would remain in place until they were replaced, with a deadline for replacement of May 1, 2018. When the LOCs were not extended or replaced prior to May 17, 2018, the Department collected the LOCs, and held the proceeds in escrow. Within a few weeks thereafter (and a mere six months of the acquisition), DCEH threatened to precipitously close the entire chain unless the Department provided it some financial relief. This put the Department in the position of needing to take steps to avoid a precipitous closure of the entire chain. And presumably that was important to the lenders as well, as we understand that at least some group of them continued to provide financing for the transition from EDMC to DCEH, and the later transition of some of the schools from DCEH to Education Principle Foundation ("EPF"). In furtherance of the goal of avoiding a closure of the entire chain, the Department released a portion of the LOC proceeds to fund the teach-out of certain closing DCEH schools between August and December 2018 to allow students at those campuses to be taught out before the campuses closed in December 2018. By doing this, a precipitous closure of the entire chain was avoided. Following negotiations in December 2018 and January 2019 – in which the lenders were actively involved – South University and most of the remaining Art Institutes were sold to EPF and remain open today. In January 2019, in accordance with agreements reached during those negotiations and to facilitate the transfer to EPF, the Department returned \$14,500,000 of the LOC proceeds to the lenders. The Department continues to hold the remaining LOC proceeds in escrow to satisfy losses to the Department. The Department holds \$48,594,113.27 in escrow. In addition to the closed school loan discharges ("CSLD") described below, the escrow is also subject to offset for prior audit and program review liabilities that have been established, but not yet offset.

We thank you for your patience as the Department went through the process of verifying its data related to CSLD. Losses to the Department from CSLD far exceed the amount of the remaining LOC proceeds in escrow, and the CSLD are the focus of this letter. Other Department losses relate to borrower defense claims, close-out audit liabilities, Perkins Loan federal capital contributions that were not returned, and loan cancellations for students at the Illinois Institute of Art and Art Institute of Colorado. Information related to those liabilities, as well as the teach-out expenditures for the campuses that closed in December 2018, were included in the December 8 Letter.

For purposes of this letter only, the Department has limited the CSLD amounts to those loans with a loan period start date on or prior to May 1, 2018 (*i.e.*, before the May 31, 2018 expiration date of the LOC)<sup>2</sup>:

OPE ID	School Name	Discharge Amount
00747000	Art Institute of Pittsburgh	\$15,881,878
00781900	Art Institute of Portland	\$2,443,871
00835000	Art Institute of Philadelphia	\$3,135,720

<sup>2</sup> The Department does not concede that CSLD from loan periods starting after May 1, 2018 cannot be satisfied from the LOC proceeds.

00887808	Miami International University of Art & Design - Art Inst of Charlotte	\$603,138
00887809	Miami International University of Art & Design - Art Inst Raleigh	\$865,932
00927002	Art Institute of Atlanta - Art Institute of Washington	\$2,079,618
00927003	Art Institute of Atlanta - Art Institute of Tennessee-Nashville	\$900,687
00927004	Art Institute of Atlanta - The Art Institute of Charleston	\$1,325,087
01019500	Art Institute of Fort Lauderdale	\$1,799,445
01258400	Illinois Institute of Art	\$5,086,532
01258401	Illinois Institute of Art - The IL Institute of Art – Schaumburg	\$1,401,629
01258405	Illinois Institute of Art - The Art Institute of Michigan	\$3,363,404
02078900	Art Institute of Colorado	\$3,496,082
02179900	Argosy University	\$2,094,752
02179901	Argosy University - Twin Cities	\$4,401,319
02179902	Argosy University - Atlanta	\$11,730,201
02179903	Argosy University - Washington D.C. Area	\$2,275,322
02179905	Argosy University - Hawaii	\$4,009,924
02179907	Argosy University - Phoenix	\$29,230,692
02179908	Argosy University - San Francisco Bay Area	\$1,996,695
02179909	Argosy University - Tampa	\$2,195,653
02179913	Argosy University - Seattle	\$444,250
02179914	Argosy University - Nashville	\$2,078,619
02179918	Argosy University - Sarasota	\$2,008,207
02179919	Argosy University - Dallas	\$2,435,543
02179921	Argosy University - Schaumburg	\$1,569,889
02179928	Argosy University - Los Angeles	\$1,543,569
02179929	Argosy University - San Diego	\$496,788
02179930	Argosy University - Denver	\$1,073,106
02179932	Argosy University - Inland Empire	\$2,596,526
02179935	Argosy University - Salt Lake City	\$429,111
02179936	Argosy University (Chicago)	\$10,355
02179937	Argosy University - Western State University College of Law	\$142,444
02179938	Argosy University - The Art Institute of California – Hollywood	\$5,530,069
02179943	Argosy University - The Art Institute of California - San Francisco	\$1,377,443
02179944	Argosy University - The Art Institute of California - Orange County	\$2,856,468
02179945	Argosy University - The Art Institute of California – Sacramento	\$1,710,572
02179947	Argosy University - The Art Institute of California - San Diego	\$3,314,456

02179948	Argosy University - The Art Institute of California - Inland Empire	\$4,957,187
02291300	Art Institute of Seattle	\$3,297,067
04051300	Art Institute of Las Vegas	\$2,198,934
04051304	Art Institute of Phoenix - Art Institute of Indianapolis	\$2,270,379
Grand Total		\$142,658,563

For additional context, the Department further narrowed the scope of its data to identify CSLD amounts for loans with loan period start dates on or prior to October 17, 2017 (the date of the first closing of the EDMC – Dream Center transaction):

OPE ID	School Name	Discharge Amount
00747000	Art Institute of Pittsburgh	\$12,354,624
00781900	Art Institute of Portland	\$2,086,200
00835000	Art Institute of Philadelphia	\$3,060,593
00887808	Miami International University of Art & Design - Art Inst of Charlotte	\$282,315
00887809	Miami International University of Art & Design - Art Inst Raleigh	\$353,845
00927002	Art Institute of Atlanta - Art Institute of Washington	\$1,694,329
00927003	Art Institute of Atlanta - Art Institute of Tennessee-Nashville	\$771,888
00927004	Art Institute of Atlanta - The Art Institute of Charleston	\$864,011
01019500	Art Institute of Fort Lauderdale	\$1,622,441
01258400	Illinois Institute of Art	\$5,469,186
01258401	Illinois Institute of Art - The IL Institute of Art - Schaumburg	\$1,408,615
01258405	Illinois Institute of Art - The Art Institute of Michigan	\$3,356,217
02078900	Art Institute of Colorado	\$3,576,025
02179900	Argosy University	\$2,312,637
02179901	Argosy University - Twin Cities	\$3,713,830
02179902	Argosy University - Atlanta	\$15,774,540
02179903	Argosy University - Washington D.C. Area	\$4,023,075
02179905	Argosy University - Hawaii	\$3,406,764
02179907	Argosy University - Phoenix	\$27,529,403
02179908	Argosy University - San Francisco Bay Area	\$2,552,989
02179909	Argosy University - Tampa	\$2,078,979
02179913	Argosy University - Seattle	\$444,250
02179914	Argosy University - Nashville	\$1,813,246
02179918	Argosy University - Sarasota	\$2,241,787
02179919	Argosy University - Dallas	\$1,975,498
02179921	Argosy University - Schaumburg	\$1,600,166
02179928	Argosy University - Los Angeles	\$1,376,485

02179929	Argosy University - San Diego	\$368,146
02179930	Argosy University - Denver	\$913,187
02179932	Argosy University - Inland Empire	\$2,466,139
02179935	Argosy University - Salt Lake City	\$259,284
02179937	Argosy University - Western State University College of Law	\$120,912
02179938	Argosy University - The Art Institute of California – Hollywood	\$4,291,635
02179943	Argosy University - The Art Institute of California - San Francisco	\$1,329,113
02179944	Argosy University - The Art Institute of California - Orange County	\$2,453,279
02179945	Argosy University - The Art Institute of California – Sacramento	\$1,490,222
02179947	Argosy University - The Art Institute of California - San Diego	\$2,535,350
02179948	Argosy University - The Art Institute of California - Inland Empire	\$3,980,749
02291300	Art Institute of Seattle	\$2,524,328
04051300	Art Institute of Las Vegas	\$1,763,413
04051304	Art Institute of Phoenix - Art Institute of Indianapolis	\$1,926,802
Grand Total		\$134,166,497

As the these charts demonstrate, CSLD relating to loan periods on or before May 1, 2018 far exceed the amount of funds left in the escrow accounts – even after application of the remaining escrow funds, significant unpaid liabilities will remain.

If you have any additional questions or concerns, please contact Michael Powers of my staff at [michael.e.powers@ed.gov](mailto:michael.e.powers@ed.gov).

Sincerely,



Michael Frola  
Division Chief  
Multi-Regional and Foreign Schools Participation Division